

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Residential
Mortgage Originator License of
Patrick Fulweiler

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held on September 16, 2011, at the Office of Administrative Hearings, by Administrative Law Judge Beverly Jones Heydinger, pursuant to a Notice and Order for Hearing dated July 26, 2011.

The hearing record was left open to October 3, 2011, so that Mr. Fulweiler could supplement the record. The hearing record closed on October 3, 2011, upon receipt of his documents.

Appearances: Michael J. Tostengard, Assistant Attorney General, on behalf of the Department of Commerce; Patrick Fulweiler (Applicant), on his own behalf without benefit of counsel.

STATEMENT OF THE ISSUES

In light of his credit history and tax liens, should the Applicant be denied a mortgage originator's license because of demonstrated financial irresponsibility?

The Administrative Law Judge concludes that the Department has a basis for denying the Applicant's license, but that there are mitigating circumstances that support granting the license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On or about March 10, 2011, the Applicant submitted an electronic application for a Residential Mortgage Originator License.¹

2. From 1999 to 2009, the Applicant owned and operated a business to place mortgages in the Pine City area. It was slow in the early years, but over time he

¹ Exhibit (Ex.) 1.

built up his business and gained respect of the realtors and title companies in the area. In 2008, following the crash in the housing market, business dropped off sharply. Although the Applicant attempted to maintain his business and pay all of his bills, in 2010 he was finally forced to close the business. His wife lost her job as a title closer, and the family's income dropped precipitously. The family has lost its home and is no longer able to carry health insurance.²

3. On his license application, the Applicant acknowledged that he had filed for personal bankruptcy and that he had unsatisfied liens and judgments.³

4. The Department obtained a credit report for the Applicant. The credit report showed that the Applicant had an installment loan on an automobile for which his payments were current, but he previously had past due payments. It showed that he had debts discharged in bankruptcy and three accounts closed, with a total unpaid balance of \$4,625. There were two collection actions, with a total of \$233 owing, but none past due. The Applicant also had state tax liens of \$2,118 and \$3,674.⁴

5. Based on this information, the Department determined that the Applicant was financially irresponsible because of a pattern of delinquent accounts and tax liens, and by letter dated April 11, 2011, it denied his application for a license.⁵

6. The Applicant requested a contested case hearing on March 10, 2011.⁶

7. In 2010 and 2011, the Applicant submitted financial information to the Minnesota Department of Revenue, reporting his income and expenses. Based on 2010 information, the Department of Revenue determined that he did not have funds available to enter into a repayment plan for the taxes owing; at the time of the hearing, the Applicant was waiting to hear whether a repayment plan would be required and the Applicant had recently submitted updated information.

8. During the time that he ran his business, the Applicant closed over 1,000 loans and had no complaints to the Department, the Better Business Bureau or others about his practices. There were no allegations or suggestions that he was financially irresponsible or engaged in any type of fraudulent or unscrupulous practice. He handled conventional and FHA loans, and did not originate any sub-prime loans.⁷

9. After he closed his business, the Applicant was hired by two companies, also involved with real estate financing, each of which went out of business.⁸

² Test. of P. Fulweiler.

³ Ex. 1 at page 2 of 5.

⁴ Test. of Robin Brown, Financial Institutions Division; Ex. 2.

⁵ Test. of Robin Brown; Notice of and Order for Hearing, Order to Show Cause and Statement of Charges at 2.

⁶ Notice of and Order for Hearing, Order to Show Cause and Statement of Charges at 2.

⁷ Test. of P. Fulweiler.

⁸ Test. of P. Fulweiler.

10. Since June 2010, the Applicant has been employed by American Mortgage and Equity Consultants, Inc., and is earning approximately \$48,000 per year. His family has found cheaper housing and has attempted to start again on a tighter budget. Because of his prior setbacks, the Applicant does not intend to give up his current paid position, but would like to hold a mortgage originator license to supplement his income and help his family regain some economic stability.⁹

11. At no time has the Applicant's personal finances placed any member of the public at risk. He has helped many customers clean up their personal credit history in order to qualify for financing, and he is actively attempting to do the same for his own credit. If the license is granted, he hopes to repay his debts and rebuild his credit.¹⁰

12. The Applicant submitted many letters of support.¹¹ Several writers were aware that the Applicant had suffered personal financial setbacks.

13. Officers of his current employer, American Mortgage & Equity Consultants, Inc., including the president, two vice-presidents and the Special Projects Manager, stated that the Applicant has been a responsible, ethical and hard-working employee, and that he interacts well with title companies, realtors, closers and others in the industry to assure that closing packages and loan documents are prepared properly. President Stacey Ellestad and Vice President Todd Ellestad stated that the Applicant has control over millions of dollars of warehouse lines of credit and distributions, and that he is very honest, trustworthy and a pleasure to work with.

14. Dawn Gibb and Megan Clancy, owners of Signatures Closing & Title, Inc., stated that the Applicant had been invaluable in helping individuals obtain a mortgage for a first home or refinancing. Many still call asking for his help, and Ms. Gibb would like to see the Applicant return to the industry. In her experience, he was loyal and dedicated to his customers. Ms. Clancy remarked that the Applicant shows a kind, caring compassion for his work and customers.

15. State Representative Roger Crawford, who is an independent real estate appraiser, worked with the Applicant over many years and found that the Applicant had great integrity and knowledge, and was responsive, professional and competent.

16. There were several letters from persons employed by Coldwell Banker. Each of them remarked on the Applicant's straight-forward and reliable dealings with realtors and prospective buyers. Also, they noted that the Applicant was honest with buyers who could not meet the requirements for a loan and assisted them to clean up their credit records so that they could successfully reapply.¹²

⁹ Test. of P. Fulweiler.

¹⁰ Test. of P. Fulweiler.

¹¹ The group of letters has been marked as Exhibit 3 and accepted into evidence.

¹² Letters from Theresa Janet Musgrove, Jan Carl, Mary Kay Brautigan, Lynette Carlson Strong, Clare D. Lillis.

17. Steve Brown, a loan officer for Prime Mortgage and the former owner of a mortgage company, praised the Applicant's integrity, honesty, and persistence, and his excellent record counseling and educating customers.

18. Patrick Quigley, a mortgage loan underwriter, also spoke of the high esteem in which he holds the Applicant.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subd. 7 (b) and 58A.12 (a)(2).¹³

2. The Applicant received proper and timely notice of the hearing and the Department complied with all procedural requirements of law.

3. Pursuant to Minn. Stat. § 58A.05, the commissioner shall not issue a mortgage loan originator license unless the commissioner finds at a minimum, that:

(3) the applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently.... For purposes of this chapter, a person has shown that the person is not financially responsible when the person has shown a disregard in the management of the person's own financial condition. A determination that an individual has not shown financial responsibility may include, but is not limited to:

(i) current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) current outstanding tax liens or other government liens and filings;

(iii) foreclosures within the past three years; and

(iv) a pattern of serious delinquent accounts within the past three years.

4. The Applicant has failed to show by a preponderance of the evidence that he does not have outstanding tax liens, and that he is financially responsible within the meaning of Minn. Stat. § 58A.05 (3). The Department may deny the application for a license.

¹³ Minnesota Statutes are cited to the 2010 Edition.

5. The Department shall also consider evidence of mitigating circumstances.¹⁴ The Applicant has offered evidence of mitigating factors, the confidence of his community, and of his general reputation for honesty, fairness and efficiency in the mortgage originator business.

6. The Applicant does not present any risk to the public.

7. Any Findings of Fact more properly designated as Conclusions are hereby adopted as such.

Based on these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the application of Patrick Fulweiler for a mortgage originator's license be GRANTED.

Dated: October 26, 2011

s/Beverly Jones Heydinger

Beverly Jones Heydinger
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler Suite 500, 85 Seventh Pl E, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a..

¹⁴ *Falgren v. State Board of Teaching*, 545 N.W.2d 901, 908 (Minn. 1996).

Under Minn. Stat. § 14.62, subd. 1, the agency/board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Applicant was candid about the circumstances that led to his financial problems and the number of steps he has taken to restore this family's financial stability. He freely admits that he lost his business and source of income with the collapse of the housing finance industry and that he has had to liquidate all of his assets, sell his home, and give up his family's vehicles and health insurance in order to start again. He has accepted a job in order to secure a steady paycheck and put his family back on the road to financial health.

The Applicant also admits that he owes taxes to the State. He has participated in the Department of Revenue's process to determine whether a repayment plan is feasible and, at the time of the hearing, based on his family's income and expenses, no repayment plan had been established.

Because of the unpaid taxes and spotty payment record, the Department has a basis to deny the Applicant's license. However, it should also take into account mitigating circumstances in its determination of whether it should do so.¹⁵

The Applicant's letters of support were broadly based and deeply supportive of the Applicant's performance as a mortgage originator. Many of the letters remarked on the Applicant's high level of integrity, his professional approach to his work, and the commitment he made to the persons he served. Many writers were eager to have the Applicant return to the business and looked forward to working with him. The Applicant's current employers expressed their support for the Applicant and their confidence in his oversight of millions of dollars of warehouse lines of credit and distributions.

The Department offered no evidence to rebut the Applicant's testimony that he served as a mortgage originator for many years without complaint to the Department or the Better Business Bureau.

Overall, the Applicant presented himself as honest and professional, a casualty of the steep drop in the housing finance industry, and eager to regain his license and once again do the work he enjoys so that he can help his family regain financial stability. He has demonstrated that he has the confidence of the community and that he will operate honestly, fairly and efficiently. There is no evidence that granting the Applicant a license would pose any risk to the public.

B.J.H.

¹⁵ *Falgren v. State Board of Teaching*, 545 N.W.2d 901, 908 (Minn. 1996).